

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK L. JOHNSON,	§
	§
Defendant Below-	§ No. 503, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN83-07-1724
Plaintiff Below-	§ Cr. ID. 83004982DI
Appellee.	§

Submitted: December 12, 2005

Decided: January 24, 2006

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 24th day of January 2006, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court:

(1) The appellant, Derrick Johnson, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Johnson's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Johnson pled guilty in 1984 to one count of second degree murder as a lesser included offense to first degree murder. The Superior Court sentenced him to life imprisonment. In August

2005, Johnson filed a motion for correction of sentence arguing that his natural life sentence is illegal and should be treated as a fixed term of 45 years imprisonment for purposes of conditional release.

(3) In support of his argument, Johnson relies on the Court's November 23, 2004 opinion in *Evans v. State*.¹ The Court, however, subsequently withdrew its initial decision in *Evans v. State* by a later *en banc* opinion decided April 11, 2005.² In its later decision, the Court held that inmates, like Johnson, who were sentenced to life imprisonment prior to the enactment of the Truth-in-Sentencing statutory scheme were not entitled to conditional release. Accordingly, there is no merit to Johnson's appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Evans v. State*, 2004 WL 2743546 (Del. Nov. 23, 2004).

² *Evans v. State*, 872 A.2d 539 (Del. 2005) (withdrawing its November 23, 2004 opinion).